

PRIVY COUNCIL.

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) v.
LUCHMESWAR SINGH (PLAINTIFF).

P. Q.*
1888
Nov. 1 & 2.

[On Appeal from the High Court at Calcutta.]

Landlord and Tenant—Long continuance of a tenancy at a low and unvaried rent—Zemindar's right against tenant—Origin and special purpose of the tenancy—Cessation to use the land for such purpose—Burden of proving permanent tenure—Inference of tenancy-at-will, or from year to year.

The evidence having shown the origin and particular purpose of a tenancy, long continued at a low and unvaried rent, *viz.*, from 1798 until 1873, when the tenant ceased to use the land for the purpose; *held*, that it was not to be inferred from that evidence that an agreement had been made between the parties that the tenant should hold a permanent tenure; and *held*, that, on such cessation, the tenant could only resist a suit to eject him by proving, or giving grounds for the inference of, an agreement with the owner of the land that he should have something more of a lease than the ordinary tenancy-at-will, or from year to year; also, that the facts here presented did not lead to that inference.

APPEAL from a decree (20th August 1886) affirming a decree (14th July 1885) of the District Judge of Tirhoot.

The question raised by this appeal was whether or not the appellant, as representing the Government of India, had in former years obtained the perpetual tenancy of village lands, within the Zemindari of the Darbhanga Raj, at a fixed rent. The object of the plaintiff's suit was to establish his right to proprietary possession, as on the termination of a tenancy, of village Malinuggur which had been occupied at a rent, and without any written lease, by the Government of India, for the purposes of its stud at Pusa, from the year 1798, when the stud was established, to its closing in 1873. The defendant asserted a right to continue to hold the village at the same fixed rent, *viz.*, Rs. 972 per annum, which had never varied.

The issues raised questions as to the nature of the plaintiff's right, and of the defendant's possession; also whether the latter had been adverse to the former, and, if so, since when; and, generally, whether the plaintiff was entitled to obtain possession from the defendant.

* *Present*: LORD FITZGERALD, LORD HOBHOUSE, and SIR R. COUCH.

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The village Malinuggur from time immemorial formed part of the Zemindari of Darbhanga. About the year 1764, before the East India Company obtained the Diwani, a jaghir for life of this village, and of others with it, was granted by the power then ruling to a Maharaja Rajbullubh, and, in February 1784, a sanad in affirmance of that grant was given to the jaghirdar by the Company. In 1798 the Company's servants arranged with him that the lands of Malinuggur, with another village, Iktiar-pore, should be leased by him to the Government for the purposes of the stud then about to be established at Pusa. But, in July of the same year, before any potta was executed, the jaghirdar died; and the jaghir lands came into the possession of the Government authorities on the lapse of the jaghir.

The Zemindar of Darbhanga, Raja Madho Singh, predecessor of the respondent, whose rights as well as those of other Zemindars, to settlement of all the lands in their zemindaris, had been recognized in Regulation I of 1793, and whose lands had been made subject to the decennial settlement, arranged with the Government Officers that the lands of both the above villages should be made over to the Superintendent of the Stud at a rent.

On the 7th April 1800, the permanent settlement of the Tirhoot estates of the Darbhanga Raj was made, and an amaldastak recognizing the Raja's proprietary right in, among other estates, the resumed jaghir, was given to him. Annexed to the Raja's application for, and agreement to settlement, was a list containing the entry of Malinuggur among the villages in the Zemindari of Darbhanga at the rent then paid, viz., Sicca-Rs. 911. And on this paper it was that the insertion of the words, "Mokarrari Astabal Company," was made at some subsequent time.

From 1798, in respect of Malinuggur the Government made an annual payment of Rs. 972, which was not varied.

In 1860, by reason of the respondent's minority, his estates were placed under the charge of the Court of Wards, and so continued till their release in September 1879. In December 1872, the Government decided to close the stud establishment at Pusa, and the inquiries directed as to what lands connected with it were in the disposition of the Government led to the assertion by the latter of a right to hold Malinuggur as on a mokarrari tenure.

The District Judge found that, from the year 1800, the possession of the defendant had not been adverse to the plaintiff's right, and that limitation was no bar to the suit, and he referred to *Perhlad Sein v. Doorga Pershad* (1) as an authority to show that the plaintiff had a *prima facie* title to the village as zemindar of the zemindari within which it was situate. He cited the observation of the Judicial Committee in that case to the following effect: "The appellant is the Zemindar. As such he has a *prima facie* title to the gross collections from all the mouzahs within his zemindari. It lay upon the respondents to defeat this right by proving the grant of an intermediate tenure." His decree declared that the defendant had no right to permanently hold Malinuggur at a fixed annual rent, and awarded possession to the plaintiff.

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On an appeal to the High Court, a Division Bench (WILSON and PORTER, J.J.) gave the following judgment:—

"Under the Regulations, Government was bound to settle these villages with the proprietor, if willing to accept the terms of the settlement; and there is no evidence adduced on the part of Government to show that, at the time this village was settled with the Maharaja of Darbhanga in 1800, any arrangement was made that Government should hold the village in perpetuity at a fixed rate of rent. It is admitted that the village did remain in the possession of Government for the purposes of the stud; but the terms on which the property was held are not apparent on the record, for we are not inclined to differ from the learned District Judge when he holds that the words 'Mokarrari Astabal Company,' in the petition for settlement of the 7th April 1800, are a subsequent insertion. Government has not produced any receipts for rent during the 73 years (1800 to 1873) the stud was in existence, although at paragraph 13 of the written statement put in on behalf of Government, it is asserted 'that from the date of the permanent settlement in 1800, the fixed annual rent of Sicca Rs. 911-10-6 has been paid to the Darbhanga Raj without variation or change.' The first evidence we can find of the payment of rent is in certain proceedings of 1876, when the Darbhanga estates were under the

(1) 12 Moore's I. A., 286 (331); 2 B. L. R., P. C., 111 (128).

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management of the Court of Wards. The Accountant of the Collector's Office, on being called upon for an explanation with regard to the *dastur* money payable to the Darbhanga Raja, writes, under date 8th February 1877: ' Besides the *dastur* money, Rs. 972-8 was paid on account of rent of the Government stud in Mouzah Malinuggur, Pergunnah Kusma, along with the *dastur* money, and 'has been so written.'

"In the following years, this money appears to have been incorporated with the *zar-dasturat*. We think that the District Judge in this case is right in holding that the onus of proving the nature of the tenancy rests with the defendant, who sets up a title adverse to the proprietor. It is a significant fact that all the other landed property acquired by the stud was held under *pottas*; but with regard to this property no *pottah* is forthcoming, and doubts have always been expressed by the Government officers whether any proper title has been acquired thereto. It must be borne in mind that this village was acquired as an outlying farm for the purpose of pasturage and for growing oats. There can be little doubt, as pointed out by the learned Counsel for the respondent, that if the Stud Officers had found the land unsuitable for the purposes required, or if the village had been swept away by the river, Government might have given back the property to the Raja, who could not possibly have established, as against Government, any agreement to hold the village in perpetuity at a fixed rate of rent. As regards the contention that Government has expended a large sum of money in the improvement of this village, there is no evidence of this on the record. It is true that a bund was constructed to protect the village from inundation, and some trees were planted; but there is nothing to show whether that was done by Government or the tenants on the land.

"The fact that the Government has held a valuable property for more than eighty years at a very low rate of rent, and was permitted to do so without demur so long as the land was required for the public purpose for which it was originally granted, *viz.*, for the purposes of the stud, does not, now that the stud has been abolished, afford any answer to the claim of the Maharaja as proprietor of the estate to recover back his property.

"In this view of the case, we see no reason to disturb the decree of the Lower Court, and dismiss this appeal with costs."

On this appeal Mr. *W. F. Robinson*, Q. C., and Mr. *J. D. Mayne*, for the appellant, argued that the construction to be put on the whole transaction of 1798 was that the Government took possession of Malinuggur as of a tenure terminable at its pleasure only, and at a fixed annual rent. In the Courts below sufficient weight had not been given to the fact that the Government had been in possession since 1798 at a rent which had never varied, and without any proviso as to the continuance of the stud. The question was as to the inference that ought to be drawn as to the actual understanding, or agreement, that existed between Raja Madho Singh and the authorities. At the time when possession was obtained, the Government was in a position to make terms more favourable to itself than the getting of a mere tenancy-at-will. The Government could have made another grant of the lapsed jaghir. The protection of tenancies at fixed rents came into the legislation of Regulation VIII of 1793 (see s. 49); and it was not the presumable agreement that the lands acquired for the Pusa stud, at that time established without any limit as to its duration, should be occupied for any period short of what the Government might determine. There was nothing in what was done in 1798, or 1800, to show that the Government altered their position, which originally was to take a mokarrari potta from the jaghirdar, into that of tenants-at-will to the zemindar, at a rent liable to enhancement from time to time. There was enough to shift the burden of proof on to the respondent to establish such a change in their plans.

Mr. *T. H. Cowie*, Q. C., and Mr. *R. V. Doyne*, for the respondent, argued that, upon the facts, there was no ground for the inference that the Government obtained a permanent lease at a fixed rent; and there were the findings of two Courts against it. The burden of proof was on the appellant to establish a permanent lease. As the Government might at any time, on discontinuing the stud, have relinquished the tenancy; so neither could the zemindar be held bound by the presumed grant of a permanent interest. The case cited in the judgment of the Court of

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first instance, *Perhlad Sein v. Doorga Pershad* (1) was referred to; and it was contended that it was not a tenable theory that, when the jaghir was attached in 1798 as lapsed, the Government so held the lands comprised on it as their own estate, that they could, in effect, confer upon themselves a perpetual lease, binding on the Raja, who was zemindar of Darbhanga, when he accepted the settlement. Unless carried to that extent, no argument could be founded on the lapse of the jaghir.

Mr. *J. D. Mayne* was heard in reply.

Their Lordships' judgment was delivered by

THE LORD CHIEF JUSTICE:—In this dispute about the village of Malinuggur, it appears that the Government of India have been in possession ever since the month of July 1798. It is not disputed that during the whole of that time, and for long before, the village was part of the *Milkiut*, that is, of the zemindari or proprietary estate of the Darbhanga Raj. The Raja now seeks to recover the property. The Government takes the ground that it has made to the Raja, in some shape or other, either as a matter of account or as a matter of actual payment, one uniform payment for 80 years before this dispute arose, and they claim to be perpetual tenants of the village at a fixed rent. At one time, when they put in their written statement, the Government set up that there was an actual mokarrari lease granted to them, and they did so in perfect good faith, upon the ground that a document in the Collector's office, being the petition of the Raja for permanent settlement, contained a description of Malinuggur as being the mokarrari property of the East India Company. It has however been found by both the Courts below that that description is an interpolation or a mistake of some kind, and that the true version of the petition is that, which we have in the record, which, if their Lordships understand it rightly, is a copy of the original petition given out from the Collector's office to the Raja, and found in the duffur of the Raja. Therefore that contention is not now insisted upon; and their Lordships have it that in the petition

(1) 12 Moore's I. A., 286 (331); 2 B. L. R., P. C., 111 (128).

of the Raja for a permanent settlement, which contains a list of a very large number of mouzahs, there are a considerable number, about 16, specified as being held under mokarrari grants, and that the Mouzah Malinuggur is not so specified.

But then the Government say that, whether there is or is not a lease, the true inference from the facts is that there was a binding agreement for a perpetual tenancy by them under the Darbhanga Raj. They insist very strongly that it would be irrational to suppose that for such a number of years the Raja would have gone on accepting a payment which had come to be very far below the value of the land, unless he was bound by an agreement of that kind.

That leads their Lordships to consider under what circumstances possession was first taken by the East India Company, and their payment to the Raj settled on the basis on which it has been made for so many years.

It appears that this village of Malinuggur was part of a jaghir granted to one Rajbullubh, apparently by the Nawab Nazim. It was granted certainly before the year 1764, and that was before the Diwani of Bengal, Behar, and Orissa was taken over from the Nawab Nazim by the East India Company. Therefore the British Government found the jaghirdar in possession. In the year 1784 his position was apparently confirmed by a grant from the British Government. Nothing turns upon the special language of that grant, and it is only valuable as showing what the position of the jaghirdar was at that time. It is clear that at that time the village was known to be part of the *Milkiyat* of the Darbhanga Raj. What exactly the relations were between the Raja and the jaghirdar does not appear. But the jaghirdar was in possession, and of course was free of revenue.

In 1798 the Government desired to take the mouzah of Malinuggur for the purposes of a stud of horses which they were setting up, or had set up, in the immediate neighbourhood. Rajbullubh was quite willing that they should take his land, and he sent in an account of the revenues extending over 17 years with a request to know what the Government would propose to pay him, and to see the form of the potta that they proposed. Before anything further was done upon those

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negotiations, the jāghirdar Rajbullubh died. The next step in the transaction was that the jaghir was attached, which was done immediately, in the month of July 1798. Within a week apparently of Rajbullubh's death, the Company attached the jaghir, no doubt for the purpose of securing the revenue. Thus the Company got into possession.

The next step after that is the report of Mr. Graham, the Agent of the Company, which bears date the 27th August, 1798. After taking notice of what had passed with the jaghirdar, and of his death, and that the lands had been attached by the Government, he makes this proposal. He says:—"I now propose, as the lands (being part of the *Milkiut* of Raja "Madho Singh)"—that is Darbhanga—"will continue in the hands of Government until the conclusion of the decennial settlement; that it be recommended to the Governor-General in Council to put the lands appertaining to Mouzahs Malinuggur,"—and another village which we may leave out of consideration—"under charge of Captain William Frazer, the Superintendent of the Stud, at a net rent of Sicca Rs. 1,500 from the commencement of the ensuing Fusli year 1206"—that would be 1798 or 1799—"leaving it to the Collector to pay the Malikana to Raja Madho Singh," and so forth.

It would seem that what Mr. Graham advised was done. The Government were in possession; the decennial settlement was going on; their agent had come to a conclusion in his own mind what was a fair rent to pay for the village of Malinuggur; and he advises that the Superintendent of the Stud shall take possession and shall pay the amount which he had settled as fair. That seems to have been done, because, when we come to the permanent settlement, we find on the face of the Raja's petition, and again on the face of an account in the Collector's office, which shows the sums payable to Raja Madho Singh for the resumed Jaghir mehal of Rajbullubh, that those sums, so far as they are due from Malinuggur, amount to the proportion attributable to Malinuggur of the Rs. 1,500 which Mr. Graham advised to be paid for the two villages. Upon that footing the permanent settlement was made. The Raja was the proprietor. The Company were bound by the Regulation

to make the settlement with the proprietor. They did make that settlement, and, as far as their Lordships can judge, they made it exactly on the same footing on which they had been dealing with the village during the currency of the decennial settlement, that is to say, for the space of some two years before the permanent settlement was effected.

That is the whole of the contemporary evidence. There is no other evidence which bears upon the position of the parties excepting this, that we find that from that time forward up to the year 1872, matters remained in precisely the same position. The Government continued in possession of the village; they continued to use the lands for the purpose of the stud; and they continued to be charged at the same rate as was entered in the petition and in the Collector's account.

In 1872 the Government came to the conclusion that they had better give up the stud, and it was accordingly given up, and the village has been used for ordinary agricultural purposes since that time. At that time the present Maharaja of Darbhanga was an infant, and some three or four years after he attained his majority he demanded possession. The mode in which that demand was made, and the time at which it was made, have been observed on by the Counsel for the Government; but in their Lordships' opinion, nothing whatever turns upon the correspondence which took place in the years 1881 and 1883; but whatever were the rights of the parties in 1872, when the stud was given up, precisely the same rights exist now.

Under these circumstances their Lordships think there is no substantial doubt that the Courts below, who have both decided that the Government cannot establish the inference that they are prepetual tenants, are right. The Government undoubtedly are tenants of the Darbhanga Raj. It is for them to show why the landlord may not recover his property, and they can only do that by proving that there is some agreement between them and their landlord that they shall have something more than the ordinary tenancy-at-will or from year to year. All they offer is some conjecture of such an agreement founded simply on their long possession at a uniform rate of payment. If we could not find out the origin of these things, there would be strength in

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that argument, but as the origin of them is known the argument loses its force. In fact the possession is not difficult to explain in other ways. It is not the business of the plaintiff to explain the possession; it is the business of the defendants to show that it leads to the inference of a perpetual tenancy. But even if the *onus probandi* did not lie so clearly on the defendants, their Lordships think that the reasonable explanation has been given by the Courts below, and that there probably was some understanding, which might have amounted to an agreement, that the Government should have this land for the purposes of a stud, not that they should have it for ordinary agricultural or commercial purposes to make what money they could of it. Thus the moment it ceased to be occupied for the purposes of a stud the rights of the landlord would revert, and it was he and not the Government who would have the benefit of the increased value of the land. That hypothesis seems more probable than the alternative one, and it is of course always more satisfactory when we can arrive at a reasonable explanation of the facts instead of merely resting the case upon the failure of one party to make out his case against the other.

The result is that their Lordships think the Courts below were quite right, and that this appeal must be dismissed with costs, and they will humbly advise Her Majesty to that effect.

Appeal dismissed.

Solicitor for the appellant: *The Solicitor, India Office, Mr. Treasure.*

Solicitors for the respondent: *Messrs. Sanderson & Holland.*

C. B.